

PART 1800—PUBLIC ACCESS TO NACIC RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

Subpart A—General

Sec.

- 1800.1 Authority and purpose.
- 1800.2 Definitions.
- 1800.3 Contact for general information and requests.
- 1800.4 Suggestions and complaints.

Subpart B—Filing of FOIA Requests

- 1800.11 Preliminary information.
- 1800.12 Requirements as to form and content.
- 1800.13 Fees for record services.
- 1800.14 Fee estimates (pre-request option).

Subpart C—NACIC Action on FOIA Requests

- 1800.21 Processing of requests for records.
- 1800.22 Action and determination(s) by originator(s) or any interested party.
- 1800.23 Payment of fees, notification of decision, and right of appeal.

Subpart D—Additional Administrative Matters

- 1800.31 Procedures for business information.
- 1800.32 Procedures for information concerning other persons.
- 1800.33 Allocation of resources; agreed extensions of time.
- 1800.34 Requests for expedited processing.

Subpart E—NACIC Action on FOIA Administrative Appeals

- 1800.41 Appeal authority.
- 1800.42 Right of appeal and appeal procedures.
- 1800.43 Determination(s) by Office Chief(s).
- 1800.44 Action by appeals authority.
- 1800.45 Notification of decision and right of judicial review.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 64 FR 49879, Sept. 14, 1999, unless otherwise noted.

Subpart A—General

§ 1800.1 Authority and purpose.

This part is issued under the authority of and in order to implement the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552); and section 102 of the National Security Act of 1947, as

amended (50 U.S.C. 403). It prescribes procedures for:

(a) Requesting information on available NACIC records, or NACIC administration of the FOIA, or estimates of fees that may become due as a result of a request;

(b) Requesting records pursuant to the FOIA; and

(c) Filing an administrative appeal of an initial adverse decision under the FOIA.

§ 1800.2 Definitions.

For purposes of this part, the following terms have the meanings indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; otherwise ten (10) days may be added if responding by international mail;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the information review and release program instituted under the Freedom of Information Act;

Direct-costs means those expenditures which an agency actually incurs in the processing of a FOIA request; it does not include overhead factors such as space; it does include:

(1) *Pages* means paper copies of standard office size or the dollar value equivalent in other media;

(2) *Reproduction* means generation of a copy of a requested record in a form appropriate for release;

(3) *Review* means all time expended in examining a record to determine whether any portion must be withheld pursuant to law and in effecting any required deletions but excludes personnel hours expended in resolving general legal or policy issues; it also

means personnel hours of professional time;

(4) *Search* means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids; it also means personnel hours of professional time or the dollar value equivalent in computer searches;

Expression of interest means a written communication submitted by a member of the public requesting information on or concerning the FOIA program and/or the availability of documents from NACIC;

Federal agency means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

Fees means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist NACIC in determining the proper fee category and NACIC may draw reasonable inferences from the identity and activities of the requester in making such determinations; the fee categories include:

(1) *Commercial* means a request in which the disclosure sought is primarily in the commercial interest of the requester and which furthers such commercial, trade, income or profit interests;

(2) *Non-commercial educational or scientific institution* means a request from an accredited United States educational institution at any academic level or institution engaged in research concerning the social, biological, or physical sciences or an instructor or researcher or member of such institutions; it also means that the information will be used in a specific scholarly or analytical work, will contribute to the advancement of public knowledge, and will be disseminated to the general public;

(3) *Representative of the news media* means a request from an individual actively gathering news for an entity that is organized and operated to publish and broadcast news to the American public and pursuant to their news dissemination function and not their commercial interests; the term *news*

means information which concerns current events, would be of current interest to the general public, would enhance the public understanding of the operations or activities of the U.S. Government, and is in fact disseminated to a significant element of the public at minimal cost; freelance journalists are included in this definition if they can demonstrate a solid basis for expecting publication through such an organization, even though not actually employed by it; a publication contract or prior publication record is relevant to such status;

(4) *All other* means a request from an individual not within categories (h)(1), (2), or (3) of this section;

Freedom of Information Act or “FOIA” means the statutes as codified at 5 U.S.C. 552;

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

Originator means the U.S. Government official who originated the document at issue or successor in office or such official who has been delegated release or declassification authority pursuant to law;

Potential requester means a person, organization, or other entity who submits an expression of interest;

Reasonably described records means a description of a document (record) by unique identification number or descriptive terms which permit a NACIC employee to locate documents with reasonable effort given existing indices and finding aids;

Records or agency records means all documents, irrespective of physical or electronic form, made or received by NACIC in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by NACIC as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of NACIC or because of the informational value of the data contained therein; it does not include:

National Counterintelligence Center

§ 1800.13

(1) Books, newspapers, magazines, journals, magnetic or printed transcripts of electronic broadcasts, or similar public sector materials acquired generally and/or maintained for library or reference purposes; to the extent that such materials are incorporated into any form of analysis or otherwise distributed or published by NACIC, they are fully subject to the disclosure provisions of the FOIA;

(2) Index, filing, or museum documents made or acquired and preserved solely for reference, indexing, filing, or exhibition purposes; and

(3) Routing and transmittal sheets and notes and filing or destruction notes which do not also include information, comment, or statements of substance;

Responsive records means those documents (i.e., records) which NACIC has determined to be within the scope of a FOIA request.

§ 1800.3 Contact for general information and requests.

For general information on this part, to inquire about the FOIA program at NACIC, or to file a FOIA request (or expression of interest), please direct your communication in writing to the Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703)874-5844. For general information or status information on pending cases only, the telephone number is (703)874-4121. Collect calls cannot be accepted.

§ 1800.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the Freedom of Information Act. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Filing of FOIA Requests

§ 1800.11 Preliminary information.

Members of the public shall address all communications to the NACIC Coordinator as specified at § 1800.03 and

clearly delineate the communication as a request under the Freedom of Information Act and this regulation. NACIC employees receiving a communication in the nature of a FOIA request shall expeditiously forward same to the Coordinator. Requests and appeals on requests, referrals, or coordinations received from members of the public who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on all pending requests shall be terminated in such circumstances.

§ 1800.12 Requirements as to form and content.

(a) *Required information.* No particular form is required. A request need only reasonably describe the records of interest. This means that documents must be described sufficiently to enable a professional employee familiar with the subject to locate the documents with a reasonable effort. Commonly this equates to a requirement that the documents must be locatable through the indexing of our various systems. Extremely broad or vague requests or requests requiring research do not satisfy this requirement.

(b) *Additional information for fee determination.* In addition, a requester should provide sufficient personal identifying information to allow us to determine the appropriate fee category. A requester should also provide an agreement to pay all applicable fees or fees not to exceed a certain amount or request a fee waiver.

(c) *Otherwise.* Communications which do not meet these requirements will be considered an expression of interest and NACIC will work with, and offer suggestions to, the potential requester in order to define a request properly.

§ 1800.13 Fees for record services.

(a) *In general.* Search, review, and reproduction fees will be charged in accordance with the provisions below relating to schedule, limitations, and category of requester. Applicable fees will be due even if our search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the Freedom of Information Act.